

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SUPERSPEED, LLC,

Plaintiff,

v.

GOOGLE, INC.,

Defendant.

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Civil Action No. 4:12-cv-01688

JURY TRIAL DEMANDED

STIPULATION AND [PROPOSED] ORDER AMENDING THE SCHEDULING ORDER

Plaintiff SuperSpeed, LLC and Defendant Google Inc., submit the following stipulation and respectfully request entry of the attached proposed order.

WHEREAS, Amending the Scheduling Order has become necessary based on developments the parties could not have anticipated when the Scheduling Order was entered;

WHEREAS, pursuant to the Scheduling Order (Docket No. 29) and P.R. 2-1(b), on November 16, 2012, Google disclosed and made available for inspection by SuperSpeed source code and other technical information relating to the products SuperSpeed has accused of patent infringement;

WHEREAS, SuperSpeed's outside counsel began inspecting that material December 3 through 5, 2012, and the parties subsequently met and conferred regarding Google's disclosures;

WHEREAS Google made additional source code and documents available for inspection on or about December 18, 2012, and January 11, 2013;

WHEREAS, the parties engaged in extensive negotiations over the scope of a jointly proposed protective order governing the treatment of confidential information, which resulted in the entry of a Protective Order by the Court on January 10, 2013 (Docket No. 37). Subsequent to

the entry of that order, SuperSpeed's outside patent counsel, together with a technical expert, reviewed the materials Google made available with its initial P.R. 2-1(b) Disclosures from January 22 to 23, 2013;

WHEREAS, on February 1, 2013, Google's counsel advised SuperSpeed's counsel that Google had discovered an inadvertent omission of certain source code from its P.R. 2-1(b) Disclosures, and that Google is currently working to supplement its production of source code to correct the omission, which supplementation Google expects to occur this week;

WHEREAS, the parties also continue to meet and confer about several specific issues SuperSpeed has raised regarding the materials Google has produced thus far, and hope to resolve them without the need for motion practice;

NOW, THEREFORE, in order to provide SuperSpeed, its counsel, and its experts sufficient time to review the materials Google has made and will make available pursuant to P.R. 2-1(b), before SuperSpeed discloses its preliminary infringement contentions and document production pursuant to P.R. 3-1 and 3-2, the parties hereby STIPULATE and AGREE to extend by five (5) weeks the deadline by which SuperSpeed shall serve its P.R. 3-1 and 3-2 disclosures of preliminary infringement contentions and document production;¹

The parties further STIPULATE and AGREE to adjust the case schedule contemplated in the Scheduling Order to accommodate this change, without affecting the deadlines the Court already has scheduled for claim construction briefing and a *Markman* hearing. To that end, the parties agree to the following deadlines:

- March 15, 2013 (changed) – Comply with P.R. 3-1 and 3-2
- April 26, 2013 (changed) – Comply with P.R. 3-3 and 3-4

¹ SuperSpeed reserves the right to move to compel additional materials if it determines that Google's P.R. 2-1(b) disclosures are insufficient, to seek further adjustments to the scheduling order if made necessary by such motion, and to seek leave to amend its preliminary infringement contentions if appropriate.

- May 8, 2013 (changed) – Comply with P.R. 4-1
- May 24, 2013 (changed) – Comply with P.R. 4-2; last day to exchange privilege logs
- June 7, 2013 (changed) – Comply with P.R. 4-3; disclosure of claim construction experts and service of Fed. R. Civ. P. 26(a)(2) materials; deadline to file amended pleadings without leave to amend; deadline to submit candidates for court-appointed special master or court-appointed expert
- June 14, 2013 (changed) – Submit technology tutorial to the Court (optional); respond to amended pleadings
- June 19, 2013 (changed) – Claim construction discovery deadline (P.R. 4-4)
- June 28, 2013 (**unchanged**) – Comply with P.R. 4-5(a)(1) as modified in the Scheduling Order (D.I. 29) (parties submit opening claim construction briefs)
- July 19, 2013 (**unchanged**) – Comply with P.R. 4-5(a)(2) as modified in the Scheduling Order (D.I. 29) (parties submit responsive claim construction briefs)
- July 26, 2013 (**unchanged**) – Comply with P.R. 4-5(a)(3) as modified in the Scheduling Order (D.I. 29) (parties submit reply briefs not to exceed 10 pages); notice of estimated amount of time requested for the Claim Construction Hearing
- August 9, 2013 (**unchanged**) – Submit Claim Construction Chart in WordPerfect 8.0 (or higher) format in compliance with P.R. 4-5(a)(4), (b), (c), and (d)
- August 16, 2013 (**unchanged**) – Claim Construction Hearing

IT IS SO STIPULATED.

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2013, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Southern District of Texas, using the electronic filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/Neal S. Manne
* Neal S. Manne, Attorney in Charge for
Plaintiff SuperSpeed Software, LLC

ORDER

Having considered the stipulation between Plaintiff SuperSpeed, LLC and Defendant Google Inc., and good cause appearing therefor, IT IS HEREBY ORDERED that the Scheduling Order (Docket No. 29) shall be amended as follows, other deadlines except the below to remain in effect.

- March 15, 2013 – Comply with P.R. 3-1 and 3-2
- April 26, 2013 – Comply with P.R. 3-3 and 3-4
- May 8, 2013 – Comply with P.R. 4-1
- May 24, 2013 – Comply with P.R. 4-2; last day to exchange privilege logs
- June 7, 2013 – Comply with P.R. 4-3; disclosure of claim construction experts and service of Fed. R. Civ. P. 26(a)(2) materials; deadline to file amended pleadings without leave to amend; deadline to submit candidates for court-appointed special master or court-appointed expert
- June 14, 2013 – Submit technology tutorial to the Court (optional); respond to amended pleadings
- June 19, 2013 – Claim construction discovery deadline (P.R. 4-4)

PURSUANT TO STIPULATION, IT IS SO ORDERED.

_____, 2013

SIM LAKE
UNITED STATES DISTRICT COURT JUDGE